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Child Abuse Reporting Laws

The Child Welfare Act, 1978



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INFORMATION OF SUSPECTED ABUSE

The Public Duty

Any person who has information concerning the abuse, abandonment, desertion or need for protection of a child must report that information immediately to a Children's Aid Society:

s49(1)

The Professional Duty

Professional persons who have reasonable grounds to suspect in the course of their duties that a child has suffered abuse must immediately report their suspicions to a Children's Aid Society, even if the information would otherwise be considered confidential. Failure to report is an offence punishable on conviction by a fine of up to \$1,000. The obligation to report a suspicion of abuse supercedes the confidentiality provisions of The Health Disciplines Act.

s49(2)

s94(1(f))

Information of abuse which a client discloses to his lawyer does not have to be reported if the communication concerns Court proceedings actually taking place or information given in order to enable the client to obtain legal advice.

s49(4)

Protection From Civil Liability

An informant is protected from civil liability unless the report of abuse is given to the Children's Aid Society maliciously or without reasonable grounds to suspect that the information is true.

s49(3)

Defining 'Abuse'

'Child abuse' for the purpose of the reporting requirements of The Child Welfare Act, 1978, an application to a Court for access to records that would assist in the investigation of abuse, a civil action instituted on behalf of the child for recovery of damages or other compensation, (see p. 23) and the Central Register is defined as any one of the following three conditions:

- physical harm; s47(1)(a)
- malnutrition or mental ill-health of a degree that if not immediately remedied could seriously impair growth and development or result in permanent injury or death; or s47(1)(b)
- sexual molestation. s47(1)(c)

Physical harm is to be reported if the child has been severely injured by a person who has care or custody of him, or if that person has permitted the injury. For example, a child who is wilfully beaten, poisoned, burned or wounded is 'abused' within the ambit of the reporting definition. It is not necessary that the indications of injury be visible. Physical harm for the purposes of these provisions is also reportable if the child's health is at serious risk because of an adult's neglect or refusal to obtain necessary care or treatment for him. Failure to thrive diagnoses are included in the intent of the definition.

The malnutrition definition of 'abuse' addresses a lack of sufficient or the right kind of nourishment. Dehydration is included in the intent of the definition.

Mental ill health is to be reported if the child's emotional needs have been so seriously neglected as a result of rejection or lack of affection that intervention is essential. In such cases the mental ill health is reportable if the action or attitude of the person who has the child's care is the primary cause of the child's condition. It is usually accompanied by an unwillingness or inability on the part of the care-taking person to assist the child or obtain appropriate treatment.

Sexual molestation for the purpose of the reporting provisions refers to any improper sexual activity between a child and the adult who has his care or custody. The consent of the child is irrelevant, as is the absence of physical injury. Incestuous relationships are included in the intent of the definition. Improper or excessive sexual activity between children may constitute molestation if an adult in charge of either child knows about it and does nothing. The definition is not intended to encompass normal sexual experimentation between children.

It is important to remember that the conditions discussed above constitute 'abuse' for the specific purpose of the reporting laws. A child who is the subject of any of the named conditions is undoubtedly a child apparently in need of protection within the ambit of the Protection and Care Part of The Child Welfare Act, 1978. In other words, a child does not have to be 'abused' within the ambit of these definitions in order to warrant the intervention of the Children's Aid Society on his behalf. However, not every child who falls within the definition of a child in need of protection meets the criteria for the reporting provisions.

A Children's Aid Society will be particularly vigilant that its reporting obligations do not overshadow its primary responsibility to the child upon whom the abuse has been allegedly inflicted. The duty to report serious cases of abuse and the obligation to take immediate protective action on the child's behalf are separate and distinct responsibilities.

The focus of the Children's Aid Society is always fixed on the protection of a child from immediate harm, and the prevention of further or more serious harm.

VERIFYING THE INFORMATION

Ensuring a Plan for the Child's Protection

The Children's Aid Society which receives a report of alleged child abuse makes an immediate assessment of the facts presented in order to ensure that a plan exists for the protection of the child while further investigation is carried out. The investigation includes a search of the Society's existing records for relevant information, interviews with the referral source and others who are said to have pertinent information, interviews with the alleged victim of the abuse where appropriate, and interviews with the alleged abuser and/or persons in charge of the child. Assistance will be sought from such medical, law enforcement, education, and legal personnel as are available in the community and appropriate to the circumstances of the case. In some instances a multi-professional assessment team may be required.*

Contact with the Central Register

An essential part of the investigation includes contact with the Central Abuse Register, within three working days from the receipt of the complaint. In order to guard against unauthorized access, Register information will be provided through a separate return telephone call to the Society's head or branch office. Through this contact the Society will be able to ascertain whether any person named in the information has been previously identified to the Register, the date of any prior identification and the jurisdiction from which the report originates.

Ont. Reg
389/79

* For further information, see Guidelines for Police and Children's Aid Society involvement in investigating reports of child abuse, February, 1979.

Contact with the Former Register *

The information contained in this registry will not be automatically transferred to the Central Register. Persons identified as alleged abusers in the former registry will be identified by the Central Register only if a Society files a Report based on verified information of abuse. It is not the Ministry's intention that Society's verify all abuse cases already on file in the former registry if no new incident of abuse warrants a Report under the new legislation. However, the information contained in the former registry may assist the Society in its investigation and should be explored at the time the Society contacts the Central Register.

Contact with other Children's Aid Societies

If the family and/or alleged abuser is identified by the Register, the Society which has received the report of suspected abuse will be in immediate contact with any Society which has filed a previous registration in order to ascertain particulars of that Society's intervention with the family. This contact will ensure that as complete a history of the family as possible underlies the Society's plan for the child's protection.

Access to Records

Conditions Precedent to Application

A Director of Child Welfare or a Children's Aid Society may make application to the Court for an Order for the production of part or all of any record, writing or document that the Court considers relevant to an investigation to determine whether abuse has been or is likely to be inflicted on a child.

* To distinguish between the Central Register created by the Child Welfare Act, 1978 and the administrative Register in existence prior to this legislation, latter is referred to as the former Registry.

The Children's Aid Society or the Director of Child Welfare must satisfy the Court of the following:

- 1) that there are reasonable and probable grounds to believe that there are records, writings or documents in the place named in the application that are relevant to an investigation into alleged or likely abuse of a child, and
- 2) that the custodian of the records has refused a request by a Director of Child Welfare, a local Director of a Children's Aid Society or an authorized representative of either to inspect such records.

The records, writings or documents (in whole or in part) that are disclosed to the Court in the course of the Hearing held to determine whether an order for production should be made, may be disclosed only to those persons named by the Court, and subject to its direction. Disclosure of the information for any purposes other than those permitted by the Court is an offence, punishable on conviction by a fine of up to \$2,000, or to imprisonment for a term of up to 1 year, or both.

s50
s94(1)(f)

Notice

Notice of the application must be given to the custodian of the records.

s50

Authority of the Court Order

A Director of Child Welfare, a Local Director of a Children's Aid Society or the authorized representative of either may inspect all or any part of the records, writings or documents designated in the Court order. Information may be extracted from those records and such copies reproduced as the person inspecting the documents considers necessary.

s50(1)

Disclosure or transmission of the information is prohibited except for the purpose of investigating the child's alleged need of protection or for the purpose of giving evidence in proceedings under the Protection and Care Part of The Child Welfare Act, 1978.

s50(3)

Considering The Mental Health Amendment Act, 1978

In determining whether to order the production of a clinical record in the custody of a psychiatric facility listed under The Mental Health Amendment Act, 1978, the Court must give equal consideration to the following:

- 1) the health and safety of the child, and
- 2) whether disclosure or examination of part or all of the clinical record is likely to result in harm to the treatment or recovery of the patient named in the clinical record, or bodily harm or injury to the mental condition of a third person.

s50(4)

Notifying The Informant

The Register contains no information that has the effect of identifying the person or persons making a report to a Society unless the informant is himself the alleged abuser.

A Children's Aid Society may assure a person reporting abuse (whether that person be a professional or member of the public) that the source of the report will be kept confidential for purposes of investigating and verifying the 'abuse' situation and that any report to the Central Register will not contain information that has the effect of identifying him.

The informant who wishes to remain anonymous should be encouraged to reveal his identity if he has information that will be crucial in assisting the Society to protect a child. The Society should indicate to an informant that his evidence may be crucial in any Hearing to determine the

child's need of protection. A professional informant should be encouraged to tell his client that the suspicion of abuse has been reported to a Children's Aid Society.

The person who has disclosed his suspicions to the Society should be told that the Children's Aid Society may also have to call upon him in the course of an expungment Hearing to give evidence as to why a name should not be expunged from the Register (see p. 18).

The Society will acknowledge receipt of the information of suspected abuse, and assure any informant who has identified himself to the Society that appropriate remedial action has been undertaken. Once the Society has completed its investigation, it may choose to indicate to the professional informant the conclusions it has reached. In those situations where protective action has not been taken on behalf of a child, and the informant thinks that the Society has refused or failed within a reasonable time to act on behalf of the allegedly abused child, he should be advised by the Society that he may ask the Court to determine whether the Society should intervene.

DECIDING WHETHER TO SUBMIT A REPORT TO THE REGISTER

Evaluating the 'seriousness' of alleged abuse in order to determine whether it warrants a report to the Central Abuse Register is not an easy task. Too broad an interpretation of the abuse definitions will inundate the Register with reports and thereby undermine its effectiveness as a monitoring tool. On the other hand, too narrow an interpretation will exclude from the Register those cases which should rightfully be tracked, and diminish its effectiveness altogether. The task of a Children's Aid Society is to achieve a balance between these two extremes, guided by the specific circumstances and history of each case. For example, a single bruise does not as a general rule constitute 'abuse' which should be reported to the Central Register. However, it may warrant a report if it is the result of successive incidents of discipline shown to border on the excessive. A minor injury should never be disregarded if high risk indicators show that the child is living in an actually or potentially abusive household.

As a result of its investigation of any particular case, the Children's Aid Society may conclude that:

- the complaint is frivolous or unfounded or not of a serious nature. In such cases no report is filed with the Register.
- the child has been or is being abused, but the identity of the abuser is not known or is uncertain. In such cases the report is filed with the Register but the Society completes only those parts concerned with identification of the child.
- the child has been or is being abused and that the abuser is known. In such cases, a complete report is filed with the Register. This would include those cases where the parent and/or other caretaking person can offer no plausible explanation for the abuse and circumstances indicate that the person is responsible for it.
- the evidence is inconclusive with respect to the alleged abuse, the identity of the abuser or both. In such cases, the Society should carefully consider its evidence before deciding not to submit a report. If the Society is prepared to defend its decisions in a subsequent expungement proceeding, the report should be submitted to the Register.

An intrinsic part of the Society's focus will be its awareness that there is both active and passive abuse. A person who permits injury to a child is as much an abuser as the person who inflicts the injury.

A Children's Aid Society will be guided by the condition of the child, the circumstances surrounding the incident of alleged abuse, the history of the child and his family, and the potential danger to the child's life, health or morals.

For purposes of reporting, the Society names as an alleged abuser not only the person(s) who has inflicted the abuse upon the child but also any person who has permitted the child to suffer abuse. The naming of several registered persons may be essential in some cases to alert both the Register and another Children's Aid Society of previous situations of abuse or as a precaution for the protection of other children.

s47(2)

Information of alleged abuse is 'verified' and reportable once the Local Director of the Children's Aid Society, on the basis of his Society's investigation and consultation with other professionals (if appropriate), has reasonable grounds to believe that the child is or has been abused.

THE CENTRAL REGISTER

Filing The Report With The Register

The Children's Aid Society must report verified information concerning the abuse of a child to the Director of Child Welfare appointed to maintain the Abuse Register. The information stored in the Register will be available on a restricted access basis (see p. 16) for the following purposes:

1. to track abused children, their parents/parent substitutes and/or the suspected abusers,
2. research, and
3. to monitor the case management and child abuse programs of the Children's Aid Societies.

The Report is to be filed with the Central Register within 14 days after the information is verified by the Society in the manner determined by the Director and a copy retained in the Society's files.

Notifying The Alleged Abuser

Once the Central Register has recorded the name of an alleged abuser, the Director of Child Welfare appointed to manage/supervise the Central Register will advise the alleged abuser by registered mail that his name has been recorded in the Register, or that he is otherwise identifiable from the information filed with the Register.

s52(12)

If a Children's Aid Society specifically requests, it may deliver the notification on the registered person on the Director's behalf.

When the Central Register enters the report of the Children's Aid Society and registers the name of the alleged abuser, it will confirm to the Children's Aid Society that it has received the report and that notification of registration has been given to the alleged abuser.

The alleged abuser will be informed in the notification of his right to inspect the information and the procedure available to him for correction of false information or expungement of his name from the Register.

Follow-Up Reports

The status of the case will be followed up with the Central Abuse Register within 4 months of the initial report, and thereafter on each anniversary date of the initial report until the Society's file is closed, either because treatment or prevention of the abuse is no longer the primary objective of Society involvement with the family or because the file has been referred to another Children's Aid Society.

Ont. Reg.
389/79

An abuse case reported to the Register will not be closed by the Children's Aid Society until the treatment or prevention of the abuse is no longer the primary objective of the Society's involvement with the family. Where a file is referred to another Society, the initial Society will inform the Register of the case transfer. The recipient Society assumes the follow-up obligation of the referring Society. Where the child has relocated outside the Province, the Regional Office will request the child welfare authorities in the other jurisdiction to act as agents of the Ontario Society in its follow-up obligations. The Regional Office will also be responsible for submission of the appropriate follow-up or termination reports.

Ont. Reg.
389/79

The Children's Aid Society is required to submit reports of its investigation and verification efforts on behalf of abused children to the Area Office as requested. Both the Regional and Area Offices of the Ministry will have access to the Central Abuse Register for the purpose of supervising and/or assisting a Society.

Child Abuse reported directly to the Ministry

Any information of suspected child abuse reported directly to the Ministry will be relayed for appropriate investigation to the Children's Aid Society in the area from which the report originates. Where the child resides in a jurisdiction other than that from which the report originates, the Society in that community will also be informed of the report.

Protection from civil Liability

An officer or employee of a Children's Aid Society is protected from civil liability arising from the reporting duties of The Child Welfare Act, 1978 provided his action or failure to act is in good faith.

Alleged Abuse of a Child In the care of a Society

If the place in which the abuse is alleged to have occurred is a facility or foster home for which a Children's Aid Society is responsible, (including all placements and children as defined by 'Child in Care' in the Regulations), or the alleged abuser a person providing care on the Society's behalf, the reporting investigation will be supervised by the Area or Regional Office to whom the report is directed.

Access To Information In The Register

Information contained in the Register is confidential. A registered person or his agent may inspect information in the Register that pertains to him, but no other information.

s52(8)

In order to ensure that the information contained in the Register is used only for purposes of investigation, data collection and research, access to the Register and removal and/or disclosure of any information from it is restricted to the following:

1. A Coroner (or legally qualified medical practitioner or police officer directed by the Coroner) for the purpose of an investigation under The Coroner's Act, 1972.
2. The Official Guardian (or his agent) for the purpose of a civil action on the child's behalf under Part II of The Child Welfare Act, 1978.
3. The registered person (or his agent) for the sole purpose of inspecting information in the Register which directly relates to him.
4. The Director of Child Welfare, who may authorize access to any of the following persons, subject to appropriate terms and conditions:
 - (i) a person on the staff of the Ministry,
 - (ii) a Children's Aid Society,
 - (iii) a child protection agency recognized by a jurisdiction outside Ontario,
 - (iv) a person who is or may be providing services or treatment to a registered person,
 - (v) a legally qualified medical practitioner,
 - (vi) researchers (for bona fide research purposes only).

s52(10)

s52(6)(f)

Persons requiring the approval of a Director of Child Welfare request access from a Director of Child Welfare named for that purpose. The approval will stipulate the place in which the inquirer may inspect the information and the extent to which the information may be extracted. The Director may permit access to a person providing services or treatment to an identified abuser only if the registered person gives written consent. Communication of any information that has the effect of identifying any person named in the Register is strictly prohibited. Contravention of the access restrictions is a criminal offence, punishable on conviction by a fine of up to \$1,000 or to imprisonment for a maximum term of 1 year, or both.

s94(1)(f)

Admissibility Of The Register In Evidence

The Register is admissible in evidence only for the following purposes:

1. to prove compliance or non-compliance with any of the reporting provisions of The Child Welfare Act, 1978,
2. in an appeal to the Divisional Court from a Director's refusal to amend information or expunge a name contained in the Register,
3. in proceedings under The Coroner's Act, 1972,
4. in proceedings instituted on the child's behalf for compensation or damages under Part II of The Child Welfare Act, 1978.

s52(11)

The fact that the Register itself is inadmissible in evidence does not prevent any person from giving direct evidence of the facts contained in the Register in protection proceedings instituted on behalf of the child.

Minimum Period For Identification

A name recorded by the Register will be identifiable for a minimum period of 25 years, unless the Director has ordered the name expunged.

Ont. Reg.
388/79

Expungement of a Name From the Register

Any person who receives notification that he is identifiable from the Register may inspect the information and on the basis of his inspection request a Director of Child Welfare to expunge his name from the Register altogether or to otherwise amend the identifying information.

s52(13)

If the Director (or his delegate) intends to refuse the request, he must hold a Hearing with at least 10 days Notice to the parties. A name cannot be expunged from the Register unless the Director is satisfied that there are reasonable grounds to believe that the information should not be in the Register or that it is in error. The Director may order a Society's records to be amended to reflect his decision. Failure to comply with the Director's order is an offence, punishable on conviction by a fine of up to \$2,000 or to imprisonment for a period of up to 1 year or both.

s52(14)

s52(15)
s94(1)(c)

The Director's decision to register an alleged abuser constitutes a statutory power of decision within the meaning of The Statutory Powers Procedure Act, 1971 and that statute governs expungement proceedings.

Appeal from the Director's Decision

Any party to the Hearing may appeal a decision of the Director to the Divisional Court of the Supreme Court of Ontario. The Divisional Court may either affirm the Director's decision or rescind it and refer the matter back to the Director with appropriate direction.

s52(19)(20)

CIVIL ACTION FOR RECOVERY OF DAMAGES ON BEHALF OF AN ABUSED CHILD

If the Children's Aid Society is of the opinion that a ward in its care and custody has a cause of action or other right of recovery arising from the abuse and that proceedings to recover damages or other compensation would be in the best interests of the child, the Society may institute and conduct those proceedings on the child's behalf. The Society should be particularly concerned about possible causes of action against persons allegedly abusing or permitting abuse of a child in its care.

The Official Guardian has the same right with respect to any child whether or not the child is a ward of the Children's Aid Society or the Crown. A Society should always consider seeking the advice and counsel of the Official Guardian as to possible action to be taken on a child's behalf.

s51

Proceedings under The Compensation for Victims of Crime Act, 1971 are included in the intent of this provision. Enquiries should be made to:

The Criminal Injuries Compensation Board
505 University Avenue - 3rd Floor
Toronto, Ontario
M5G 1X3

The Board may grant compensation in the form of a lump sum payment (which will be held in trust for the child) and possibly regular payments in the form of an allowance. The legislation also allows for a review if further evidence becomes available or circumstances change after the initial decision.

Copies of The Compensation for Victims of Crime Act, 1971 are available from the Queen's Printer for Ontario.

